

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF NURSING

In the Matter of  
the Nursing License of  
Kenneth N. Nicholson, L.P.N.  
License No. 48590-0

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for prehearing conference before Administrative Law Judge Barbara L. Neilson commencing at 2:00 p.m. on Wednesday, October 22, 1997, at the Office of Administrative Hearings in Minneapolis, Minnesota.

Michael J. Weber and Mary Ann Bernard, Assistant Attorneys General, 525 Park Avenue, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Board of Nursing (the "Board"). There was no appearance by the Respondent, Kenneth N. Nicholson. The record closed on October 22, 1997, upon the Respondent's failure to appear.

**NOTICE**

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Minnesota Board of Nursing, Suite 500, 2829 University Avenue, S.E., Minneapolis, Minnesota 55414, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF THE ISSUE**

The issue in this case is whether or not disciplinary action should be taken against the Respondent in accordance with Minn. Stat. §§ 148.261 and 148.265 (1996).

Based upon the record in this matter, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On April 22, 1997, a Notice of Conference with Board of Nursing Review Panel was served on the Respondent by sending it via U. S. Mail to his last known address on file with the Board (5309 Welcome Avenue North, Crystal, Minnesota 55429). On or about May 9, 1997, the U.S. Postal Service returned the Notice to the Board with a forwarding address of 13038 West 1st Drive, Lakewood, Colorado 80228. The Board had also received information from the Colorado Board of Nursing that Respondent was residing at 451 East Boardwalk # 302, Fort Collins, Colorado 80525.

2. On June 12, 1997, the Notice of Conference was re-served by U.S. mail on Respondent at the addresses in Lakewood and Fort Collins, Colorado. The U.S. Postal Service returned the Notice served to the address in Lakewood Colorado, on June 24, 1997, and the Notice served to the address in Fort Collins, Colorado, on June 30, 1997. The U.S. Postal Service provided no additional forwarding addresses.

3. On September 15, 1997, a Notice of and Order for Prehearing Conference and Hearing in this matter was mailed to the Respondent at the Crystal, Minnesota, and Fort Collins and Lakewood, Colorado, addresses set forth in Finding No. 1 above. The Notice of and Order for Prehearing Conference and Hearing scheduling the prehearing conference for October 22, 1997.

4. The Notice of and Order for PreHearing Conference and Hearing that was mailed to the Respondent contained the following statement:

Respondent is urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against the Respondent.

5. The Respondent did not appear at the October 22, 1997, Prehearing Conference. Respondent did not contact the Board or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by Respondent in this matter.

6. Respondent has not informed the Board of his current mailing address.

7. The allegations set forth in the Notice of and Order for Prehearing Conference, having been deemed proved and taken as true, are hereby incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Minnesota Board of Nursing and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. §§ 214.10, 214.103 and 14.50 (1996).

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The Minnesota Board of Nursing has complied with all relevant substantive and procedural requirements of statute and rule.

4. Pursuant to Minn. Stat. § 148.261, subd. 1(17) (1996), and Minn. Rules 6310.3300, subp. 2 (1995), licensees must notify the Board as soon as possible of an address change.

5. Under Minn. Rule 1400.6000 (1995), the Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

6. Under Minn. Rule 1400.6000 (1995), when a party defaults, the allegations and the issues set out in the Notice of and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true and deemed proved.

7. Based upon the facts set out in the Notice of and Order for Prehearing Conference and Hearing, the Respondent has violated Minn. Stat. §§ 148.261, subd. 1 (5), (17), and (21), and 148.265 (1996), and Minn. R. 6310.3300, subp. 2 (1995), and is subject to disciplinary action by the Minnesota Board of Nursing.

8. An order by the Board prescribing disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge make the following:

**RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that disciplinary action be taken against the L.P.N. license of Kenneth N. Nicholson by the Minnesota Board of Nursing.

Dated: October 27, 1997

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Default.

**NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Board of Nursing is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.